

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
(Boston)

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| Jack Rogers and Paul Pinella, Plaintiffs, v. Comcast Corporation and AT&T Broadband, Defendants. |)) Civil Action No.: 04-10142 EFH) DISTRICT COURT) DISTRICT OF MASS. |
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**PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION
FOR LEAVE TO FILE A REPLY BRIEF IN SUPPORT OF
THEIR MOTION TO COMPEL ARBITRATION**

OR, IN THE ALTERNATIVE

PLAINTIFFS' MOTION TO FILE A SURREPLY

Plaintiffs oppose Defendants' Motion for Leave to File a Reply Brief in Support of Their Motion to Compel Arbitration ("Defendants' Motion") on the following grounds:

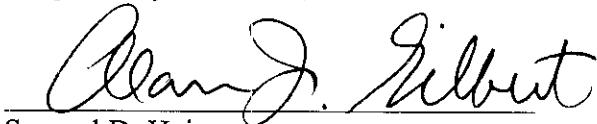
1. Defendants' Motion does not comply with Local Rule 3.01(b) because it omits the certification that counsel conferred and attempted to resolve or narrow the dispute.
2. Defendants' proffered reply improperly raises the issue of federal preemption for the first time. Because this issue was not raised earlier, Plaintiffs did not address it in their Opposition.
3. Moreover, in their reply brief, Defendants make a number of errors of fact and law to which Class Plaintiffs have also had no previous opportunity to respond.
4. Under these circumstances, Plaintiffs will suffer prejudice if the Court allows Defendants to file a reply. Accordingly, the Court should deny Defendants' Motion.

5. If the Court allows Defendants to file their reply, a surreply is necessary to show that Defendants' preemption argument is waived, and even if considered, Defendants' preemption argument is meritless. A surreply is also necessary to respond to the errors of law and fact raised in Defendants' reply and would assist the Court in its consideration of the pending motion to compel arbitration.

WHEREFORE, Plaintiffs request that Defendants' Motion be DENIED. In the alternative, if Defendants' Motion is not denied, Plaintiffs request that the Court GRANT their Motion to File a Surreply. A copy of that Surreply is filed herewith. This Surreply is identical to the Surreply filed today in the case of *Kristian v. Comcast Corporation*, No. 03CV12466 EFH, except for an additional paragraph relating to Class Plaintiff Pinella found at page 5 of the attached Surreply.

Dated: August 2, 2004

Respectfully submitted,



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CERTIFICATE OF CONFERENCE

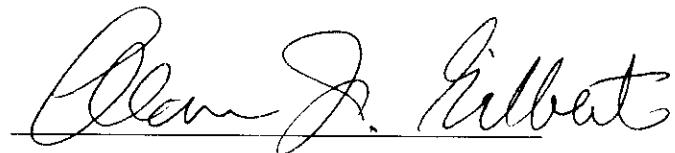
Pursuant to L.R. 7.1(A)(2), I certify that counsel for Plaintiffs have conferred in good faith with counsel for the defendants in an attempt to resolve the issues that are the subject of this Motion, but that the parties were unable to reach an agreement. Court action on this Motion is therefore required.



Alan I. Gilbert

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on Defendants' counsel of record by United States Mail on this 2nd day of August, 2004, addressed as listed below.



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